IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9432 OF 2005

Pandharinath Mangal Patil & Anr... .... Petitioners.
V/s
Ravindra Ambo Mhatre & Ors.... . ... Respondents.

Mr.E.R.Naik, Adv. For the petitioners.

Mr.S.R.Nargolkar, AGP for respondents 3 to 5.

None for respondents 1 and 2.

CORAM: V.G. PALSHIKAR
AND
V.R.KINGAONKAR, JJ.

18.04.2006

PC:

By this petition the petitioners seek mandamus directing the Collector, Thane District to decide the application purportedly made under section 16 (2) of the Bombay Villagle Panchayats Act, 1958 (hereinafter referred to as the "Act"). The allegations in the application are that the respondents 1 and 2 have incurred disqualification as contemplated by the Act and hence the question as to whether they have so incurred or not is liable to be decided. It is statutory duty of the Collector to do so under section 16(2) of the Act and consequently failure to perform his duty under the section can be mandated by this Court.

2. The whole basis of the allegations made by the petitioners in the present petition as also before the Collector is that the respondents 1 and 2 have illegally changed their names from voting list to Assembly Constituency from one place to another place and this change is not permissible under the Representation of Peoples' Act, 1951. Consequently it is a disqualification as

contemplated by section 14 of the Act. Section 16 provides that if any member of Panchayat who is elected or appointed as such member was subject to any of the disqualifications mentioned in section 14 at the time of election or appointment, or during the term for which he has been elected or appointed, incurs such disqualification mentioned in section 14, he shall be disabled from continuing the office and his office shall become vacant.

3. The disqualification has to be therefore incurred under section 14 of the Act. Section 14 defines disqualifications which are as under:

1) Conviction for an offence under the Untouchability (Offences) Act, 1955

or Bombay Prohibition Act, 1949 or any other law in previous five years;

2) Conviction for any other offence and sentence of not less than six months

in period of five years prior to the election.

It is then provided that the person who has been disqualified by or under any law for the time being in force for the purposes of election to the Legislature of the Maharashtra State there has to be therefore a finding that such disqualification is incurred by that person. The submission is that under the Representation of Peoples' Act such disqualification is incurred. Nothing is presented before us to come to the conclusion that the wrongful deleting one's name from the voters' list of one constituency or Assembly and illegally getting it entered in the voters' list of another Assembly constituency is a disqualification under the Peoples' Representation Act, 1955. There being no case whatsoever for interference it would be futile to issue any mandamus of the kind prayed for. Hence writ petition is dismissed.

18.4.06